



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

**Commission for Public Health**

**ROY COOPER** • Governor

**KODY H. KINSLEY** • Secretary

**HELEN WOLSTENHOLME** • Interim Deputy Secretary for Health

**MARK T. BENTON** • Assistant Secretary for Public Health

Division of Public Health

**MEMORANDUM**

**DATE:** March 1, 2022

**TO:** Rulemaking Interested Persons

**FROM:** Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health and Director of Regulatory and Legal Affairs, Division of Public Health

**RE:** Notification of Proposed Rule Actions: 15A NCAC 18A .2508, .2545

Pursuant to G.S. 150B-21.2, this memorandum serves as the required notice to interested persons that the North Carolina Commission for Public Health (CPH) is proposing to amend rule 15A NCAC 18A .2508 and adopt rule 15A NCAC 18A .2545. [Session Law 2021-77, Section 8.\(a\)](#) amended G.S. 130A-280 to include “spas operating for display at temporary events” within the term “public swimming pool,” effective July 1, 2022. The proposed rules establish a framework to regulate these spas for protection of the public health and safety. CPH has submitted notice of its intent to make these rule changes to the NC Office of Administrative Hearings (OAH).

In accordance with G.S. 150B-21.4, a fiscal note was prepared for the proposed rules and approved by CPH. The proposed rules are expected to have an impact on state and local funds, but not expected to have a substantial economic impact. The fiscal note was approved by the NC Office of State Budget and Management (OSBM) on January 24, 2022.

The notice of text that was published in today’s edition of the NC Register is attached to this memorandum and may be found on OAH’s website at <https://www.oah.nc.gov/documents/nc-register>. The text of the proposed rules and fiscal note may be found on the CPH’s website at <https://cph.publichealth.nc.gov/>.

A public hearing on these proposed rules is scheduled for Monday, April 11, 2022 at 2:00 pm. The public hearing will be held by teleconference. You may participate in the public hearing by dialing 919-715-0769. No access code is required.

CPH is accepting public comments on the proposed rules from March 1, 2022 through May 2, 2022. You may submit comments by email to [cphcomment@lists.ncmail.net](mailto:cphcomment@lists.ncmail.net) or by mail to Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health, 1931 Mail Service Center, Raleigh, NC 27699-1931. Comments will also be accepted at the public hearing. The proposed effective date of these rules is July 1, 2022.

Should you have questions related to this memorandum, the proposed rules, or the fiscal note, please contact Alice Isley, Program Manager, Environmental Health Section, Division of Public Health at (252) 495-3612.

Attachment

**NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH**

LOCATION: 5605 Six Forks Road, Building 3, Raleigh, NC 27609  
MAILING ADDRESS: 1931 Mail Service Center, Raleigh, NC 27699-1931  
[www.ncdhhs.gov](http://www.ncdhhs.gov) • TEL: 919-707-5000 • FAX: 919-870-4829

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

cc: Dr. Ronald May, Chair, Commission for Public Health  
Mr. Mark Benton, Assistant Secretary for Public Health, Division of Public Health  
Mr. Larry Michael, Environmental Health Section Chief, Division of Public Health  
Mr. Shane Smith, Food Protection and Facilities Branch Head, Division of Public Health  
Ms. Alice Isley, Program Manager, Environmental Health Section, Division of Public Health  
Ms. Kirsten Leloudis, Program Manager, Regulatory and Legal Affairs, Division of Public Health

## TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rule cited as 15A NCAC 18A .2545 and amend the rule cited as 15A NCAC 18A .2508.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://cph.publichealth.nc.gov/>

**Proposed Effective Date:** July 1, 2022

**Public Hearing:**

**Date:** April 11, 2022

**Time:** 2:00 p.m.

**Location:** This public hearing will be held by teleconference at (919) 715-0769 (no access code required).

**Reason for Proposed Action:** Session Law 2021-77, Section 8.(a) amended G.S. 130A-280 to include “spas operating for display at temporary events” within the term “public swimming pool,” effective July 1, 2022. The proposed rules establish a framework to regulate these spas for protection of the public health and safety.

**Comments may be submitted to:** Virginia Niehaus, CPH Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; email [cphcomment@lists.ncmail.net](mailto:cphcomment@lists.ncmail.net)

**Comment period ends:** May 2, 2022

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact ( $\geq$  \$1,000,000)
- Approved by OSBM
- No fiscal note required

### CHAPTER 18 - ENVIRONMENTAL HEALTH

#### SUBCHAPTER 18A - SANITATION

#### SECTION .2500 - PUBLIC SWIMMING POOLS

##### 15A NCAC 18A .2508 DEFINITIONS

The following definitions apply throughout this Section:

- (1) "Department" means North Carolina Department of Health and Human Services.
- (2) "Equipment replacement" means replacement of individual components of the hydraulic and disinfection systems such as pumps, filters, and automatic chemical feeders.
- (3) "Public swimming pool" means public swimming pool as defined in G.S. 130A-280. Public swimming pools are divided into five types:
  - (a) "Swimming pools" are public swimming pools used primarily for swimming.
  - (b) "Spas" are public swimming pools designed for recreational and therapeutic use that are not drained, cleaned, or refilled after each individual use. Spas may include units designed for hydrojet circulation, hot water, cold water mineral bath, air induction bubbles, or any combination thereof. Common terminology for spas includes "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spa," and "hot tub."
  - (c) "Wading pools" are public swimming pools designed for use by children, including wading pools for toddlers and children's activity pools designed for casual water play ranging from splashing activity to the use of interactive water features placed in the pool.
  - (d) "Water recreation attractions" are pools designed for special purposes that differentiate them from swimming pools, wading pools, and spas. They include:

- (i) water slide plunge pools and run out lanes, which transfer the kinetic energy of the users' velocity through friction to the slide;
  - (ii) wave pools;
  - (iii) rapid rides;
  - (iv) lazy rivers;
  - (v) interactive play attractions that incorporate devices using sprayed, jetted, or other water sources contacting the users and that do not incorporate standing or captured water as part of the user activity area;
  - (vi) training pools deeper than a 24 inch deep wading pool and shallower than a 36 inch deep swimming pool; and
  - (vii) artificial swimming lagoons as defined in G.S. 130A-280.
- (e) "Special purpose and therapy pools" are pools designed and used for therapeutic treatments or physical training and fitness outside of a licensed medical facility or practice of a licensed physical therapist. They include:
- (i) float tanks used for float therapy in a salt brine solution;
  - (ii) swim spa training pools which use jetted water for stationary swimming against a water current;
  - (iii) exercise therapy and treadmill pools equipped for water resistance exercise therapy; and
  - (iv) scuba pools designed and used for training swimmers to use self-contained underwater breathing apparatus.
- (f) "Display spa at a temporary event" or "DSTE" is a portable, above ground spa that contains water but is not used for body immersion and is displayed at a temporary event.
- (4) "Registered Design Professional" means an individual who is registered or licensed to practice engineering as defined by G.S. 89C or architecture as defined by G.S. 83A.
- (5) "Remodeled" means renovated in a manner requiring disruption of the majority of the pool shell or deck, changes in the pool profile, or redesign of the pool hydraulic system.
- (6) "Repair" means returning existing equipment to working order, replastering or repainting of the pool interior, replacement of tiles or coping, and similar maintenance activities. This term includes replacement of pool decks where the Department has determined that no changes are needed to underlying pipes or other pool structures.
- (7) "Safety vacuum release system" means a system or device capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to suction outlet flow blockage.
- (8) "Splash zone" means the area of an interactive play attraction that sheds water to a surge tank or container to be recirculated.
- (9) "Temporary event" means a transitory fair, carnival, circus, festival, or public exhibition.
- ~~(9)~~(10) "Unblockable drain" means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.
- ~~(10)~~(11) "Water feature" means any component within a public swimming pool that pumps, jets, or sprays water above the waterline.

*History Note: Authority G.S. 130A-280; 130A-282; S.L. 2019-88; S.L. 2021-77;  
 Eff. May 1, 1991;  
 Temporary Amendment Eff. June 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
 Amended Eff. April, 1, 2013; May 1, 2010; March 1, 2004; April 1, 1999; January 1, 1996; October 1, 1994;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019;  
 Temporary Amendment Eff. December 3, 2019;  
 Amended Eff. October 1, 2020.*

**15A NCAC 18A .2545 DISPLAY SPA AT A TEMPORARY EVENT**

A display spa at a temporary event (DSTE) shall not be required to comply with the rules of this Section except as specified in this Rule.

- (1) A DSTE shall not operate without a permit that has been issued by the local health department that serves the county in which the temporary event is located. The duration of a permit for a DSTE shall be no more than 21 consecutive calendar days. The applicant may apply for additional permits to operate a DSTE for multiple 21-day periods at the same temporary event.
- (2) One permit application shall be submitted for each DSTE. The applicant shall submit the application for a permit at least 15 calendar days before commencing operation of a DSTE. The application form shall be submitted to the local health department that serves the county in which the temporary event is located and shall include the following information:
  - (a) applicant's name, address, and phone number;
  - (b) name of the temporary event;
  - (c) street address of the temporary event;
  - (d) proposed operating dates; and
  - (e) signature of the applicant.
- (3) A DSTE shall meet the requirements of Rule .2535 of this Section, except as follows:

- (a) automatic chemical feeders shall not be required;
- (b) written records shall only be required to include disinfectant concentration, pH, and the type and amount of chemicals added to the DSTE;
- (c) disinfectant residual shall be measured every day before opening the DSTE to the public;
- (d) disinfectant concentrations shall be maintained at or above 4 ppm free chlorine or 8 ppm free bromine; and
- (e) pH shall be maintained between 7.0- 7.8.
- (4) A sign shall be posted on each permitted DSTE that states: "DISPLAY SPA – ONLY HANDS AND FOREARMS ALLOWED IN WATER." The text on the sign shall be at least two inches in height.
- (5) When the water in a DSTE does not meet the water quality standards set out in the rules of this Section, the DSTE shall be kept closed with a latched or locked cover that prevents the public from coming into contact with the DSTE water. The applicant shall post a sign on the DSTE that states: "SPA CLOSED." The text on the sign shall be at least two inches in height.
- (6) The applicant shall keep water quality records on site during the temporary event and for six months after the completion of the temporary event. The applicant shall provide water quality records to the local health department that issued the DSTE permit and the Department upon request.
- (7) All pool chemicals stored on-site at the temporary event shall be stored in a water resistant, covered container in an area that is not used by the public.
- (8) When the applicant or applicant's designee is not available to supervise a DSTE, the DSTE shall be kept closed with a latched or locked cover that prevents the public from coming into contact with the DSTE water.
- (9) The permit for each DSTE shall be posted for the duration of the temporary event in a location that is visible to the public.
- (10) The applicant or the applicant's designee shall report any death, serious injury, or complaint of illness attributed to the applicant's DSTE in accordance with Rule .2540 of this Section.

History Note: Authority G.S. 130A-280; 130A-282; S.L. 2021-77.